

### **REMARKS**

Claims 46, 51, 63-65, 68, 70, 73, 75, 78, and 88 have been amended to correct clerical and typographical errors without altering the intended scope of the claims.

Claims 1-45 have been canceled in favor of pending claims 46-95, which are intended to be directed to the same subject matter with use of claim language more suited for U.S. practice where the language of claims 1-45 is more suited for some non-U.S. jurisdictions.

No new matter has been introduced, and entry of the amendments is respectfully requested to leave claims 46-95 as pending.

### **RESPONSE TO RESTRICTION**

Reconsideration and modification or withdrawal of the Restriction Requirement is respectfully requested in light of the following remarks. As an initial matter, Applicants note that claim 52 was not included with any of the Groups set out in the Requirement. Applicants believe that claim 52 belongs at least with claims 53-66 at least because claim 53 is dependent from claim 52 and both claims 52 and 53 are directed to the same subject matter.

Additionally, Applicants have corrected a clerical error in claim 51. The claim remains directed to the subject matter of a nucleotide sequence encoding an ScFv antibody as found in at least claims 52-66. Applicants respectfully request that claim 51 be rejoined with claims 52-66 for this reason and urge clear indication to this effect.

The Restriction Requirement sets forth the following Groups in light of the cancellation of claims 1-45:

Group I, claims 52-66 with SEQ ID NO:1;

Group II, claims 52-66 with SEQ ID NO:2;

Group III, claims 52-66 with SEQ ID NO:3;

Group IV, claims 52-66 with SEQ ID NO:4;

Group V, claims 69, 75-77, 79-83, 91, and 95 with SEQ ID NO:1;

Group VI, claims 69, 75-77, 79-83, 91, and 95 with SEQ ID NO:2;

Group VII, claims 69, 75-77, 79-83, 91, and 95 with SEQ ID NO:3;

Group VIII, claims 69, 75-77, 79-83, 91, and 95 with SEQ ID NO:4;

Group IX, claims 70-74 with SEQ ID NO:1;  
Group X, claims 70-74 with SEQ ID NO:2;  
Group XI, claims 70-74 with SEQ ID NO:3;  
Group XII, claims 70-74 with SEQ ID NO:4;  
Group XIII, claim 78 with SEQ ID NO:1;  
Group XIV, claim 78 with SEQ ID NO:2;  
Group XV, claim 78 with SEQ ID NO:3;  
Group XVI, claim 78 with SEQ ID NO:4;  
Group XVII, claim 88 with SEQ ID NO:1;  
Group XVIII, claim 88 with SEQ ID NO:2;  
Group XIX, claim 88 with SEQ ID NO:3;  
Group XX, claim 88 with SEQ ID NO:4;  
Group XXI, claims 89-90 with SEQ ID NO:1;  
Group XXII, claims 89-90 with SEQ ID NO:2;  
Group XXIII, claims 89-90 with SEQ ID NO:3;  
Group XXIV, claims 89-90 with SEQ ID NO:4;  
Group XXV, claim 92 with SEQ ID NO:14;  
Group XXVI, claims 93-94;  
Group XXVII, claims 46-50 and 84 with SEQ ID NO:1;  
Group XXVIII, claims 46-50 and 84 with SEQ ID NO:2;  
Group XXIX, claims 46-50 and 84 with SEQ ID NO:3;  
Group XXX, claims 46-50 and 84 with SEQ ID NO:4;  
Group XXXI, claims 67-68 with SEQ ID NO:1;  
Group XXXII, claims 67-68 with SEQ ID NO:2;  
Group XXXIII, claims 67-68 with SEQ ID NO:3;  
Group XXXIV, claims 67-68 with SEQ ID NO:4;  
Group XXXV, claims 85-86 with SEQ ID NO:1;  
Group XXXVI, claims 85-86 with SEQ ID NO:2;  
Group XXXVII, claims 85-86 with SEQ ID NO:3;

Group XXXVIII, claims 85-86 with SEQ ID NO:4;

Group XXXIX, claim 87 with SEQ ID NO:1;

Group XXXX, claim 87 with SEQ ID NO:2;

Group XXXXI, claim 87 with SEQ ID NO:3;

Group XXXXII, claim 87 with SEQ ID NO:4;

Applicants respectfully traverse the above because some of the above alleged Groups fail to acknowledge the presence of linking claims that encompass related inventions. The Examiner's attention is directed to MPEP 809.03, which details the handling of linking claims, such as claims that link a number of species. Applicants believe that the division of the claims based upon SEQ ID NOs as asserted in the Restriction Requirement is an assertion of the SEQ ID NOs as representing different species which are linked as follows.

Groups I-IV are linked by claims 52 and 53; Groups V-VIII are linked at least by claims 69, 91 and 95; Groups IX-XII are linked because claims 70-74 are linking claims; Groups XIII-XVI are linked by claim 78, which is a linking claim; Groups XVII-XX are linked by claim 88, which is a linking claim; Groups XXI-XXIV, are linked by claims 89-90, which are linking claims; Groups XXV-XXX are linked by claims 46-47 and 84; Groups XXXI- XXXIV are linked by claims 67-68, which are linking claims; and Groups XXXIX-XXXXII are linked by claim 87, which is a linking claim.

If the proper existence and status of the linking claims is not recognized, the Examiner will have the ability to denied examination of claims which the Applicants regard as their invention. See *In re Weber* (580 F.2d 455, 198 USPQ 328 (CCPA 1978)) and *In re Haas* (580 F.2d 461, 198 USPQ 334 (CCPA 1978)), and the discussion at MPEP 803.02 in an analogous context. These cases clearly set forth that a restriction requirement cannot be used to divide a single claim, such as a linking claim.

This is particularly clearly set forth by the assertion of Groups XXXV- XXXVIII where claims 85-86 are clearly genus claims without recitation of any of the asserted SEQ ID NOs.

In light of the foregoing, Applicants respectfully traverse for the reasons provided above and request that the division of claims based upon SEQ ID NOs be withdrawn and that the

assertion of the various Groupings of four noted above be revised into a requirement for an election of species.

Additionally, Applicants respectfully traverse the restriction between Groups I-IV (claims 52-66) and Groups XXXI- XXXIV (claims 67-68) because claims 67-68 are directed to the preparation of recombinant antibodies in the same fashion, and with use of the same nucleotide sequences, as claim 66. Accordingly, claims 52-68 should be combined and examined together. It is illogical that claims 67-68 are not in the same group with claim 66.

Additionally, Groups I-IV (claims 52-66) are related to Groups IX-XII (claims 70-74) and XVII-XX (claims 46-50 and 84) as product and multiple methods of use. Applicants thus remind the Examiner of rejoinder practice as set forth at MPEP 812.04 should any of alleged Groups I-IV be found allowable.

Similarly, Groups V-VIII are related to Groups XIII-XVI, XXI-XXIV, XXVII-XXX, XXXV-XXXVIII, and XXXIX-XXXXII as product and multiple methods of use.

In light of the above arguments, Applicants respectfully request reconsideration and modification of the instant Restriction Requirement in favor of one group comprising pending claims 52-68 with a requirement for an election of species between SEQ ID NOS:1-4. Applicants point out that amended claim 51 is directed to the same subject matter as claims 52-68 and thus may be properly combined with these claims.


In the event that the Restriction Requirement is maintained, Applicants elect Group I, claims 52-66, with SEQ ID NO:1, with traverse for the reasons provided above.

In response to the request for information regarding the relationship between amino acid sequences represented by SEQ ID NOS:1-4 and nucleotide sequences represented by SEQ ID NOS:5-8, Applicants respectfully point out that the latter are sequences capable of encoding the former. Therefore, SEQ ID NO:5 encodes SEQ ID NO:1, the sequence for ScFv 5T4. Similarly, SEQ ID NOS:6-8 encodes SEQ ID NOS:2-4, respectively.

Applicants reserve the right to pursue the subject matter of any non-elected claim in a subsequent divisional or other continuing application without prejudice.

If the Examiner believes a telephonic discussion would expedite prosecution of this application, he is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

  
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